

SUMMARY ANALYSIS OF AMENDED BILLAuthor: Laird Analyst: Gloria McConnell Bill Number: AB 1502Related Bills: See Legislative History Telephone: 845-4336 Amended Date: 04/10/03Attorney: Patrick Kusiak Sponsor: _____**SUBJECT:** Natural Heritage Preservation Tax Credit/Public Entity Property Acquisitions DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____. AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided. AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _____. X FURTHER AMENDMENTS NECESSARY. DEPARTMENT POSITION CHANGED TO _____. REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED/AMENDED _____ STILL APPLIES. X OTHER - See comments below.**SUMMARY**

This bill would allow bond funds for certain state and local government park and water projects to be used to reimburse the General Fund for the amount of awarded Natural Heritage Preservation Tax Credits (preservation tax credit) that are claimed.

SUMMARY OF AMENDMENTS

These April 10, 2003, amendments:

- allow local government bond funds to be used to reimburse the General Fund;
- limit the bond projects for which the funds can be used to reimburse the General Fund; and
- change the amount of the reimbursement to that amount awarded and claimed in the tax year.

PURPOSE OF THE BILL

According to the author's staff, this bill would allow funds from state and local government bonds to be used to reimburse the General Fund for losses attributable to the preservation tax credit.

EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative January 1, 2004.

Board Position:

<u> </u> S	<u> </u> NA	<u> </u> NP
<u> </u> SA	<u> </u> O	<u> </u> NAR
<u> </u> N	<u> </u> OUA	<u> X </u> PENDING

Legislative Director
Brian PutlerDate
04/17/03

POSITION

Pending.

Summary of Suggested Amendments

As requested by the author's office, suggested amendments are attached to resolve the implementation considerations addressed in this analysis.

ANALYSIS

STATE LAW

As stated in the analysis of the bill as introduced, the Natural Heritage Preservation Tax Credit Act of 2000 was created under state law to encourage donations of land to the state, local governments, or designated nonprofit organizations. This act allows donors under state tax law a tax credit equal to 55% of the fair market value of the donated property, based on appraisals approved by the Department of General Services. The donated property must be approved for acceptance by the Wildlife Conservation Board, which notifies the Franchise Tax Board (FTB) of the preservation tax credit awarded for each donation. This act provides that a total of \$100 million may be awarded for fiscal years beginning 2000-01 and ending before 2005-06, except due to budget constraints, no preservation tax credit can be awarded for this fiscal year 2002-03. Therefore, any preservation tax credit attributable to property donated in 2002-03 cannot be awarded in 2002-03 but may be awarded in subsequent years. However, any preservation tax credits that were awarded and unused before 2002-03 can be used for 2002-03. In any event, any unused credit may be carried forward to subsequent years until the credit is exhausted.

Existing state law prohibits FTB from disclosing any taxpayer's tax return or tax return information, except as specifically authorized by statute. Improper disclosure of state tax information is a misdemeanor. In addition, no agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains, unless expressly authorized to do so.

THIS BILL

This bill would allow public entities to use bond funds to acquire property donated pursuant to the Natural Heritage Preservation Tax Credit Act by reimbursing the General Fund for the amount of the preservation tax credit. The department or local agency acquiring the donated property would be required to make the reimbursement by transferring the bond funds to the Natural Heritage Tax Credit Reimbursement Account, which is created by this bill. The transfer would be made in the tax years in which the donor claims the tax credit, in the amount of the tax credit awarded pursuant to this division, and claimed by the donor in that tax year.

IMPLEMENTATION CONSIDERATIONS

The bill requires that the transfer of the funds be made both: 1) in the tax years in which the donor claims the tax credit, and 2) in the amount of the tax credit awarded pursuant to this division and claimed by the donor in that tax year. Implementation considerations have been identified as follows. As requested by the author's office, attached are amendments that will resolve these implementation considerations.

1) For the governmental agency to make the required transfer would require the knowledge of the amount of the tax credit that the donor claims in any given year. This would require either the taxpayer or FTB to disclose that information to the agency. However, without additional statutory authority for such a disclosure, FTB is prohibited from making such a disclosure without the express consent of the taxpayer. Historically, the FTB has expressed concern with legislation requiring the department to disclose tax return information for other than tax administration purposes.

2) The bill provides that the amount to be transferred is the amount awarded under the act and claimed in a tax year. However, the amount awarded and the amount claimed in that year will undoubtedly be two different amounts. The amount of the award is the total amount of the credit, whereas, the amount claimed would be only that amount that is applied against the taxpayer's tax in a given year. Any award in excess of the credit would then be carried over to and claimed in the subsequent years until exhausted. Clarification is needed as to the amount that is to be transferred.

FISCAL IMPACT

Departmental Costs

The department's costs to administer this bill cannot be determined until implementation concerns have been resolved.

This bill would require transfers of bond funds on the basis of tax credits awarded and claimed during a taxable year, which implies that the transfers would be with respect to the particular property donated to the state or local government. If it is later determined that FTB needs to provide the tax credit information based on the particular property, the departmental costs associated with this aspect of the disclosure will need additional consideration by staff. This issue will be further explored as the bill moves through the legislative process. Staff will continue to assist the author's office in this matter.

ECONOMIC IMPACT

Revenue Estimate

This bill as amended still does not change either the amount awarded or claimed. Therefore, this bill would not impact tax revenue, as discussed in the previous analysis.

ARGUMENTS/POLICY CONCERNS

Disclosure of tax return information may be counterproductive to the donation of the property desired by this bill. Taxpayers may be reluctant to donate property knowing that their tax return information must be disclosed.

The majority of tax returns are filed on a calendar-year basis. Tax credits are claimed on tax returns filed after the close of that calendar year. For fiscal purposes, ideally, the General Fund reimbursement would be made in the same fiscal year as the tax expenditure (claimed tax credit). However, if FTB supplies the information about the claimed tax credit, the timeliness of the reimbursement may be an issue. For FTB to disclose this tax credit information, the tax return would have to be processed and posted to the taxpayer's account. Therefore, for even those returns filed in March and April each year, it is doubtful FTB could have the tax credit information available for disclosure in time for the governmental agency to make the transfer before the end of the state's fiscal year. For tax returns filed by the extended due date, the information would generally not be available for disclosure until after October following the close of the state's fiscal year. The timeliness of the reimbursement would also be at issue with amended returns that typically are filed in subsequent tax years. Additionally, the timeliness of the reimbursement would be at issue when more than one taxpayer owns the property being donated (e.g., partnerships) and those taxpayers have different tax year endings.

For tax purposes the donation of the property could be characterized as a charitable deduction. However, the characterization of the donation may be changed under this bill. Because the property otherwise would have been acquired through a sale using bond funds, the tax credit now may look more like a sale than a donation, with the credit being the sales price.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 1502
As Amended April 10, 2003

AMENDMENT 1

On page 5, line 5, after "division." insert:

In addition to the requirements of Section 37011, the application shall include a signed authorization of the donor in a form and manner mutually agreeable to the Franchise Tax Board and the board for the disclosure by the Franchise Tax Board to the board of the amount of tax credit claimed for purposes of determining the amounts required to be transferred pursuant to subdivision (d). The signed authorization shall be deemed the donor's voluntary consent to disclose this information, for purposes of Section 1798.24 of the Civil Code.

AMENDMENT 2

On page 5, strike out lines 11 to 13, inclusive, and insert

Account on the basis of information provided by the Franchise Tax Board regarding credits claimed with respect to a qualified contribution under Section 17053.30 of the Revenue and Taxation Code.

AMENDMENT 3

On page 5, after line 27, insert:

SECTION 2. Section 19560 is added to the Revenue and Taxation Code to read:

19560. (a) Annually, the Franchise Tax Board shall provide the Wildlife Conservation Board the amount of the tax credit awarded under Division 28 of the Public Resources Code with respect to each qualified contribution, as described in Section 17053.30, that is claimed during that year.

(b) Information may not be provided to the Wildlife Conservation Board pursuant to subdivision (a) if providing such information would disclose tax return or return information of a taxpayer, unless the taxpayer has consented to such disclosure as provided in subdivision (c) of Section 37034 of the Public Resources Code.